

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WA.No. 2356 of 2007

AGAINST THE INTERIM ORDER IN WP(C)NO.27128/2007 Dated 12/09/2007

APPELLANT: WRIT PETITIONER:

M/S. SIMILIA HOMOEOPATHIC LABORATORY,
MALIKAMPEEDIKA, ALUVA,
REPRESENTED BY ITS PARTNER K.A. SAGEER.

BY ADV. SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENTS: RESPONDENTS:

1. THE SALES TAX APPELLATE TRIBUNAL,
ADDL. BENCH, ERNAKULAM.
2. THE ADDITIONAL SALES TAX OFFICER (ON DEPUTATION),
DEPARTMENT OF COMMERCIAL TAXES,
N. PARUR.
3. THE INSPECTING ASST.COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
MATTANCHERY.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/10/2007,
ALONGWITH W.P.(C)NO.27128 OF 2007, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 2356 OF 2007
and
W.P.(C) NO. 27128 OF 2007

Dated this the 3rd October, 2007

JUDGMENT

H.L.DATTU, C.J.

The matter is posted for admission. However, with the consent of the counsel on both sides, the matter is taken up for final hearing, since the issue raised in this Writ Appeal lie in a narrow compass.

2. Appellant before us is the petitioner in W.P.(C) No.27128 of 2007.

3. In the petition filed under Article 226 of the Constitution of India, the petitioner had called in question the orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench- II, Ernakulam (Tribunal for short), on Interim Petition No.384 of 2006 in T.A.No.502 of 2006. By the impugned order, the Tribunal has allowed the application filed by the State Government for condonation of delay in filing the appeal.

4. The State Government, being aggrieved by the orders passed by the first Appellate Authority, has carried the matter by way of second appeal before the Tribunal. In filing the appeal, there was a delay of nearly 2639 days. An application had been filed under Section 5 of the Limitation Act to condone the delay in filing the appeal. Notice of the said application was ordered to be issued and served on the respondent in the appeal.

5. The respondent, at the time of hearing of the application, had strongly opposed the relief sought for in the application. The Tribunal, after considering the objection so raised by the learned counsel appearing for the respondent in the appeal, has allowed the prayer made in the application and thereby has condoned

the delay in filing the appeal. The orders passed by the Tribunal, dated 24th July, 2007, is as under:

“Respondent appears. Heard both sides. Strongly opposed by the respondent. The State had detailed the reasons for not filing the appeal in time. We are convinced that those reasons are sufficient to condone the delay. Delay condoned. Appeal admitted and posted to 20.8.2007.”

6. Aggrieved by the aforesaid order passed by the Tribunal, the respondent in the appeal had carried the matter before this Court by filing W.P.(C) No.27128 of 2007. The learned Judge has passed an interim order. The order passed by the learned Judge is as under:

“G.P.takes notice.

The Tribunal is directed to dispose of the appeal on merits so that if final order is favourable to the petitioner, Writ Petition itself can be withdrawn. Post after 2 months.”

7. It is the correctness or otherwise of the order passed by the learned single Judge is the subject matter of the Writ Appeal.

8. Learned counsel appearing for the appellant would submit that the Tribunal was not justified in condoning the delay of nearly 2639 days without assigning any reason whatsoever. This aspect of the matter should have been taken note of by the learned single Judge while granting the interim prayer in the Writ Petition filed by the respondent in T.A.No.502 of 2006. Since that has not been done, according to the learned counsel, the order passed by the learned single Judge requires to be interfered with by this Court.

9. Learned Government Pleader opposes the prayer made in the Writ Appeal.

10. The undisputed facts are, that the State being aggrieved by the orders

passed by the First Appellate Authority for the assessment year 1996-97, has filed a second appeal before the Tribunal. In filing the appeal, as we have already noticed, there was a delay of nearly 2639 days. To condone the delay in filing the appeal, the State Government had filed an application as required under Section 5 of the Limitation Act.

11. The respondent in the appeal had opposed the relief sought for by the applicant in the application.

12. The Tribunal by its cryptic order, without assigning any reason whatsoever, has just condoned the delay in filing the appeal. In our opinion, in matters of this nature, the Tribunal should have taken some more precautions and should have referred to the grounds raised in the application for condonation of delay and it is only after appreciating those grounds, could have condoned the delay in exercise of its discretionary powers. In the instant case, without referring to any one of the grounds made in the application for condonation of delay, the Tribunal by its cryptic order has condoned the delay of 2639 days in filing the appeal. In our opinion, the order passed by the Tribunal is not an order in the eye of law since it does not contain any reason whatsoever. Therefore, the impugned order passed by the Tribunal requires to be set aside and the matter requires to be remanded back to the Tribunal for a fresh disposal in accordance with law.

13. While deciding the application, the Tribunal may permit the respondent in the appeal to file its objections, if any, to the application filed by the State Government for condonation of delay. With the above observations and directions, the Writ Appeal is allowed. The order passed by the learned single Judge is set aside. Consequently, the order passed by the Tribunal is also set

W.A.NO.2356/2007 & W.P.(C). NO.27128/2007

:: 4 ::

aside. The matter is remanded back to the Tribunal to reconsider the application filed by the State Government for condonation of delay in filing the appeal, after affording an opportunity of hearing to both the parties. Accordingly, the Writ Petition is also disposed of.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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